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IN THE

Supreme Court of the United States

JAMES OBERGEFELL, *et al.*,
Petitioners,

v.

RICHARD HODGES,
Director, Ohio Department of Health, *et al.*,
Respondents.

On Writs of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

BRIEF OF HUMAN RIGHTS WATCH AND THE NEW YORK CITY BAR ASSOCIATION, *ET AL.*,* AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Human Rights Watch is a non-profit, non-governmental, non-partisan international organization devoted to defending the rights of human beings worldwide, including, among others, lesbian, gay, bisexual, and transgender ("LGBT") individuals. Human Rights Watch, among other initiatives, documents and exposes abuses based on sexual orientation and gender identity worldwide. Established in 1978, Human Rights Watch is known for its accurate fact-finding, each year reporting on human rights conditions in about 90 countries. With roughly 400 staff members around the world, Human Rights Watch employs human rights professionals, country experts, lawyers, journalists, and academics of diverse backgrounds and nationalities. Human Rights Watch meets with governments, the United Nations, regional groups such as the African Union and the European Union, financial institutions, and corporations to press for changes in policy and practice that promote human rights and justice around the world.

The New York City Bar Association (the "City Bar") is a voluntary association of over 24,000 member lawyers and law students. Among other

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[1] Pursuant to Supreme Court Rule 37.3, amici curiae certify that counsel of record for all parties have consented to the filing of this brief. Pursuant to Rule 37.6, amici also certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amici or their counsel, has made a monetary contribution to the preparation or submission of this brief.

initiatives, the City Bar addresses unmet legal needs, especially the needs of traditionally disadvantaged groups and individuals such as those in the LGBT community. The Committee on LGBT Rights addresses legal and policy issues that affect LGBT individuals. Among other projects, the Committee authored a report in 2011 that supported marriage equality in the State of New York. The City Bar's programs and nonprofit affiliates include the Cyrus R. Vance Center for International Justice, which provides pro bono legal representation to civil society organizations and international human rights bodies around the world. Its numerous initiatives include supporting the Alliance for Marriage in the Americas, a collaboration of U.S. and Latin American lawyers advocating and litigating for recognition of an international human right to marriage equality.

The Canadian Civil Liberties Association ("CCLA") is a national organization established in 1964 to protect and promote respect for and observance of fundamental human rights and civil liberties. CCLA's advocacy for the rights of LGBT individuals has included, among other things: advocacy for same-sex marriage in Canada, advocating and providing public legal education events and materials with respect to the rights of LGBT youth in schools, and making submissions in the Canadian Parliament regarding the equality rights of transgender people.

The National Council for Civil Liberties ("Liberty") is one of the United Kingdom's leading civil liberties and human rights organizations.

Liberty works to promote human rights and protect civil liberties through a combination of test-case litigation, lobbying, campaigning, and research. Liberty has campaigned and litigated against LGBT discrimination in the United Kingdom for decades, and it lobbied extensively in support of the Marriage (Same Sex Couples) Act 2013.

Based in South Africa, Legal Resources Centre ("LRC") works to address the significant amount of stigma, prejudice, and ignorance concerning LGBT issues, particularly with regard to "hate crimes" (which have resulted, among other things, in murder and "corrective rape"). LRC also addresses the need for legal support by asylum seekers who flee from the threat of imprisonment and the death penalty as a result of their sexual orientation and gender identity.

Since its founding in 1979, during a military dictatorship, the Center for Legal and Social Studies ("CELS") has fought against systematic human rights violations in Argentina. With the return of democracy in 1983, CELS began to work toward consolidating the State's role in the protection of human rights, influencing the design and implementation of public policies. CELS has participated in the public debate of the law, calling attention to human rights standards.

Federación Argentina de Lesbianas, Gays, Bisexuales y Trans ("FALGBT") is a non-profit organization that serves as the hub for fifty-seven Argentine civil society organizations that promote acceptance of diversity and defend the human rights

of LGBT individuals against all forms of discrimination. FALGBT is an active member of the International LGBT and Intersex Association (ILGA).

SUMMARY OF ARGUMENT

The struggle for the human right of marriage equality is not unique to the United States. Countries around the world have addressed this issue, evaluated many of the same arguments, and debated the impact same-sex marriage would have on society. In fact, in numerous countries on four continents and Oceania, marriage equality is now a reality. And in the *eighteen* countries where same-sex marriage has been legalized, economies have not collapsed, order has not dissolved, and families have not disintegrated. Nor is there any evidence that religion has been compromised, morals eviscerated, or opposite-sex marriages harmed. To the contrary, life in these countries has continued as before—but with greater respect for the rights of all persons. The stories told and lessons learned abroad can therefore inform the merits of the arguments presently before this Court.

Retired Justice Sandra Day O'Connor predicted in 1998 that, "[i]n the next century, we are going to want to draw upon judgments from other jurisdictions. . . . We are going to be more inclined to look at the decisions of (the) European court—and perhaps use them and cite them." *See* Rebecca Lefler, *A Comparison of Comparison: Use of Foreign Case Law as Persuasive Authority by the United States Supreme Court, the Supreme Court of Canada, and the High Court of Australia*, 11 S. CAL. INTERDISC. L.J. 165, 174 (2001) (internal quotation

omitted).[2] Indeed, this Court can look for guidance from abroad when resolving constitutional questions, as doing so can aid in the understanding of basic human fairness as well as uncertainty over change. Justice Kennedy, for example, in writing for the majority in overturning laws prohibiting sexual intimacy between two people of the same sex, declared that "[t]he right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries." *Lawrence v. Texas*, 539 U.S. 558, 576-77 (2003). He continued: "Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. . . . There has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent." *Id*; *see also Roper v. Simmons*, 125 S. Ct. 1183, 1198 (2005) (noting the "stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty"); *Atkins v. Virginia*, 536 U.S. 304, 316 n.21 (2002) ("[W]ithin the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved."); *Miranda v. Arizona*, 356 U.S. 436, 486-90 (1966) (examining the protections given to citizens in England, Scotland, and India for "assurance that lawlessness will not result from warning an individual of his rights or allowing him to exercise them"). In the present case, too, it is

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[2] *Available* at http://www.newswise.com/articles/european-court-members-and-us-supreme-justices.

appropriate for this Court to look to the United States' allies and neighbors for guidance in resolving what will be one of the most important jurisprudential decisions that this Court will face in our time—whether the Constitution grants the right for people of the same gender to marry.

In attempting to resolve this question below, the Sixth Circuit acknowledged that "[f]rom time to time, the Supreme Court has looked beyond our borders in deciding when to expand the meaning of constitutional guarantees." *See DeBoer v. Snyder*, 772 F.3d 388, 417 (6th Cir. 2014). So did the State of Michigan, in urging this Court to affirm the Sixth Circuit's rejection of marriage equality. *See* Michigan Respondents' Brief in Support of Petition for Writ of Certiorari ("Mich. Resp. Br.") at 24. Both the Sixth Circuit and Michigan suggest that "progressive democracies" have decided to adhere to the "traditional" definitions of marriage, with the Sixth Circuit stating that "foreign practice only reinforces the impropriety of tinkering with the democratic process in this setting." *DeBoer*, 772 F.3d at 417. Similarly, Michigan argues that "[t]he vast majority of international tribunals have declined the invitation to judicially rewrite the longstanding marriage definition." Mich. Resp. Br. at 24. Michigan goes on to state that "[t]hese international decisions ***uniformly*** rebuff the view of the judicial branch as a political institution that fashions new constitutional rights instead of deferring to the people acting through the democratic process." *Id.* (emphasis added). The Sixth Circuit and Michigan, however, do not paint a fair picture of how "progressive

democracies" have treated the issue. Same-sex marriage has been legalized in many countries—on a national level—for fourteen years, in some cases as a result of the intervention of the judiciary.

In 2001, the Netherlands became the first country to legalize same-sex marriage, when it amended Book 1 of the Civil Code through the Act on the Opening Up of Marriage. *See, e.g.*, Kees Waaldijk, *Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands, in* LEGAL RECOGNITION OF SAME-SEX PARTNERSHIP: A STUDY OF NATIONAL, EUROPEAN AND INTERNATIONAL LAW 437, 455 (2001) (internal citation omitted). The initiative had begun in the 1980s, and in 1996, the Dutch House of Representatives passed resolution "van der Burg/Dittrich," which paved the way for opening civil marriage to same-sex couples. *See* Nancy G. Maxwell, *Opening Civil Marriage to Same-Gender Couples: A Netherlands-United States Comparison*, 18 ARIZ. J. OF INT'L & COMP. LAW 143, 150-151 (2000). After the elections in 1998, a coalition agreed on marriage equality, and a bill was approved by the Cabinet that same year. *Id.* The measure became effective on April 1, 2001. Waaldijk at 452-53. With the Netherlands paving the way for marriage equality, numerous other nations followed, including, for example, Canada, Argentina, New Zealand, and South Africa.

In Canada, a coordinated action by the judicial and legislative branches led to the legal recognition of same-sex marriage at the federal level in 2005, with the groundwork having been laid when Section 15 of the Canadian *Charter of Rights and*

Freedoms came into force in 1985. *See* Canadian Charter of Rights and Freedoms, ss.1, 2(a), 15(1). Section 15 provides for, among other things, the equal protection and benefit of the law. *See* Hurley, Mary C., Legislative Summary, Bill C-38: The Civil Marriage Act, Parliamentary Information and Research Service at 2-3 (February 2, 2005). By 2005, eleven of the twelve provincial and territorial courts to consider challenges to the "traditional" definition of marriage had ruled in favor of redefining marriage to comport with the right to equality. *Id.* at 6. Thus, even before passage of federal legislation recognizing same-sex marriage in Canada, numerous Canadian courts already had ruled in favor of same-sex marriage.

The provincial decisions in Canada were of critical importance in the federal legislative action that followed. For example, the landmark, unanimous holding of the Ontario Court of Appeal that an opposite-sex-only definition of marriage infringed on Section 15's equality right was adopted by the House of Commons Standing Committee on Justice and Human Rights in 2003. *Id.* at 8. That same year, the Canadian government referred draft legislation to the Supreme Court of Canada, requesting that the court consider multiple questions on the constitutionality of redefining marriage. *See* Reference Re Same-Sex Marriage, 3 S.C.R. 698, 705-06 (2004). The court held that redefining marriage was both within the power of the federal government and consistent with the Charter of Rights and Freedoms. *Id.* at 728. Following the Supreme Court's decision, the government in 2005 introduced Bill C-

38: The Civil Marriage Act. The bill passed that same year. Hurley at 1. The Act provides that "Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others." *Id.* at 9.

Argentina traveled a similar road to marriage equality. On April 22, 2009, plaintiffs Alejandro Freyre and José María Di Bello sought to wed before the Civil Registry in Buenos Aires. *See* Administrative Dispute Tribunal of Instruction No. 15, *Freyre, Alejandro v. GCBA* [Government of the City of Buenos Aires] Regarding (CCABA [Constitution of the Autonomous City of Buenos Aires] Art. 14) Injunction, Case: No. 34292/0 § I (Nov. 19, 2009) ("*Freyre*"). When their petition was denied, they sought an injunction against Buenos Aires, seeking an order that the authorities permit them to marry and a declaration of the unconstitutionality of the various laws that hindered the exercise of their equal rights. *Id.* Judge Gabriela Seijas recognized that removing the decision from the judiciary could "strip protections" for minorities, "leaving them subject in every case to the decisions of the majority." *Id.* at § V. She stated: "[T]he right to equality presupposes the right to be who one is, and the guarantee that the State will only intervene to protect that existence [and] to counteract any force that attempts to ruthlessly cut it short or regulate it." *Id.* at § VIII. Thus, in November 2009, Judge Seijas authorized the first same-sex marriage in Argentina. *Id.* at § XX.

As appeals from various courts awaited resolution by the Argentina Supreme Court, in 2010 the legislature passed Law 26618, the Law of

Marriage Equality, which replaced the term "man and woman" with the term "spouses." *See* Civil Marriage, Law 26.618, Civil Code Amendment, Passed July 15, 2010. President Cristina Fernández de Kirchner signed the measure into law on July 21, 2010. *See* Freedom to Marry, *The Freedom to Marry Internationally*.[3]

New Zealand has also legalized marriage equality. The issue first appeared in the courts in 1997, when plaintiffs, three couples, appealed a decision that the Marriage Act of 1955 did not permit same-sex marriages after the registrar had denied issuance of marriage licenses. *Quilter v. Attorney General* [1998] 1 NZLR 523, 526 (HC). This litigation ultimately was unsuccessful, and in 2005, a Member of Parliament even introduced a bill that would reaffirm that marriage is between one man and one woman. *See* McSoriley, John, Bills Digest No. 1260, NZ Parliamentary Library (May 10, 2005). Opponents of the bill objected: "This bill is obviously a clear example of an expression of malice and prejudice against gay, lesbian, transgender, and transsexual people." *See* Parliamentary Debates (Hansard): [2005] 628 N.Z.P.D. at 667, 671 ("N.Z. Debates").[4] The bill failed 47-73. *Id.* at 677. Then, in 2012, the Marriage (Definition of Marriage) Amendment Bill, defining marriage as between two

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[3] *Available at* http://www.freedomtomarry.org/landscape/entry/c/international (last updated Dec. 2014).

[4] *Available at* http://www.parliament.nz/resource/en-nz/48HansD_20051207/b5ed5a7c9c8550c617a3aec1b2a28a6f556dd391.

people regardless of sex, gender, or sexual identity, was introduced to Parliament with the full support of the Prime Minister. *See* Kate Shuttleworth, "Gay Marriage Gets PM's Full Support," THE SYDNEY MORNING HERALD (July 30, 2012).[5] The bill passed 77 to 44 and became an official Act of Parliament on April 19, 2013. *See* N.Z. Debates, 689 at 9506 (April 17, 2013)[6]; Marriage (Definition of Marriage) Amendment Act 2013, Public Act 2013 No. 20 (April 19, 2013).

In South Africa, the Constitutional Court ruled in 2005 that it was unconstitutional to block same-sex marriage. *See Minister of Home Affairs v. Fourie*, 2005 (1) SA 524 (CC) ("*Fourie*"). The court stayed the effect of its order for one year and gave an ultimatum to Parliament to change the relevant statutes. *Id.* at ¶¶ 135–36. Otherwise, the court would automatically "read into" the Marriage Act the words "or spouse," thereby permitting same-sex couples to marry. *Id.* Marriage equality then became the law through Civil Union Act 17 of 2006, which passed by a margin of over five to one and with support from both the governing and main opposition parties. *See* Parliamentary Monitoring Group, Civil Union Bill: Adoption, November 9, 2006[7]; *see also* Pew Research Center, Gay Marriage

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[5] *Available at* http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10823210.

[6] *Available at* http://www.parliament.nz/resource/en-nz/50HansD_20130417/b575516d55439cd15c4507e78eeaa932eb15d847.

[7] *Available at* https://pmg.org.za/committee-meeting/7592/.

Around the World (Jan. 6, 2015)[8]; Freedom to Marry, *The Freedom to Marry Internationally*.[9]

These are just five countries among numerous others—including Belgium, Brazil, Denmark, England & Wales, France, Iceland, Luxembourg, Norway, Portugal, Scotland, Spain, Sweden, and Uruguay—that have made marriage equality a reality. *See* Pew Research Center, Gay Marriage Around the World.[10]

* * *

Surely there is something to learn from the adoption of marriage equality in these countries. Marriage serves several roles in society—among other things, it underpins social order, it encourages commitment between partners, and it promotes responsible child-rearing. More specifically, marriage incentivizes long-term, stable family units for children and encourages individuals to share the economic aspects of their lives, which leads to greater opportunity and economic efficiency. *See* Michael S. Wald, *Same-Sex Couple Marriage: A Family Policy Perspective,* 9 VA. J. SOC. POL'Y & L. 291, 301 (2001) (internal citation omitted). Marriage additionally improves emotional health and

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[8] *Available at* http://www.pewforum.org/2013/12/19/gay-marriage-around-the-world-2013/.

[9] *Available at* http://www.freedomtomarry.org/landscape/entry/c/international (last updated Dec. 2014).

[10] *Available at* http://www.pewforum.org/2013/12/19/gay-marriage-around-the-world-2013/ (last updated Jan. 6, 2015).

intimacy. *Id.* at 302 (internal citation omitted). Thus, government has an interest in seeing marriage as an institution encouraged.

If the limitation of marriage to opposite-sex couples is indeed a fundamental tenet of the institution of marriage, as opponents of marriage equality tend to agree, one would expect to see the roles it serves eroding in societies where same-sex marriage is permitted. In the many countries that have legalized same-sex marriage, however, this has not been the case, as none of the aforementioned roles served by marriage have been observably impacted. A careful look at same-sex marriage in these countries—and a look at society in the aftermath of marriage equality—suggests that it is time for the United States, too, to treat LGBT individuals with equal rights under the law.

ARGUMENT

I. COUNTRIES THAT HAVE LEGALIZED SAME-SEX MARRIAGE FACED AND REJECTED ARGUMENTS SIMILAR TO THOSE ADVANCED HERE

The Sixth Circuit and the respondent state governments analyzed numerous legal frameworks through which same-sex couples might qualify for marriage equality. *See, e.g.*, *DeBoer*, 772 F.3d at 402. Unsurprisingly, many of the underlying issues—for example, (i) the rationality of denying same-sex marriage in order to regulate opposite-sex procreation, (ii) animus against LGBT human beings, (iii) whether LGBT people are a suspect class, (iv) whether the right to marriage is fundamental regardless of sexual orientation, and (v) the relative importance of respecting the concerns of people of faith and religious groups opposed to LGBT rights—were also at issue in the marriage equality debates in other countries. A review of how these issues presented themselves abroad and how they were resolved provides guidance in crafting a solution for the marriage inequality problem in the United States.

A. The Supposed Need to Regulate Procreation Is an Irrational Basis to Deny Same-Sex Marriage

A common justification for laws that deny same-sex marriage is the asserted state interest in promoting the "traditional" family and regulating procreation. Indeed, in her dissent to the Sixth

Circuit's rejection of marriage equality, Circuit Judge Daughtrey astutely observed:

> The principal thrust of the majority's rational-basis analysis is basically a reiteration of the ***same tired argument*** that the proponents of same-sex-marriage bans have raised in litigation across the country: marriage is about the regulation of "procreative urges" of men and women who therefore do not need the "government's encouragement to have sex" but, instead, need encouragement to "create and maintain stable relationships within which children may flourish."

DeBoer, 772 F.3d at 434 (Daughtrey, J., dissenting) (emphasis added).

Tired though this argument may be, it persists nevertheless. Michigan, for example, asserts that its "'state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children.'" Mich. Resp. Br. at 4 (quoting MICH. COMP. LAWS § 551.1). Michigan continues: "[T]he State has an interest in encouraging men and women to marry because of its interest in stable relationships for the procreation and raising of children." *Id.* at 27. Tennessee similarly asserts that "'[t]he family [is] essential to social and economic order and the common good and [is] the fundamental building block of our society.'"

Tennessee Respondents' Brief in Opposition of Petition for Writ of Certiorari ("Tenn. Resp. Br.") at 1. (quoting TENN. CODE ANN. § 36-3-113 (1996)). The Sixth Circuit, Michigan, and Tennessee thus suggest that only opposite-sex marriage furthers this end, as if only heterosexual families matter and can contribute to society and to the country's economic well-being. It comes as no surprise that other countries have rejected similar arguments, finding them lacking and discriminatory.

The Ontario Court of Appeal, for example, explained that to the extent marriage serves these types of societal goals, gay marriage was of no concern because common sense suggested that "[h]eterosexual married couples will not stop having or raising children because same-sex couples are permitted to marry." *See Halpern v. Attorney General of Canada* (2003), 65 O.R. (3d) 161, para. 121 (Can. Ont. C.A.). Nor was there any evidence in Canada that same-sex couples are not equally capable of childrearing or that same-sex marriages will somehow destabilize the family. *Id.* at par. 120-23, 133-34. Mere speculation—perhaps even animus—is not enough where rights are at stake, making the tired argument a wholly irrational basis for permitting discrimination. *Id.* at par. 133-39.

Similarly, in the Netherlands, a minority of the members of the Kortmann committee—an independent commission that investigated possible amendments to the marriage laws—opposed same-sex marriage based on its belief that relationships between members of the opposite sex and relationships between members of the same sex are

not equal, "if only in terms of reproduction." *See* Maxwell, *supra*, at 154. In response, the majority stated that "same-sex couples can only be afforded equal treatment if they are allowed to enter into civil marriages. These members do not view the new type of marriage as a break with tradition; after all, marriage has always been a flexible institution which has kept pace with changes in society." *Id.*

New Zealand addressed these arguments as well. During the legislative debates, the Government Administration Select Committee reviewed over twenty-one thousand written submissions and heard over two hundred oral submissions. *See* Marriage (Definition of Marriage) Member's Bill, as Reported from the Government Administration Committee, at 2, 9 (February 27, 2013).[11] Among the many concerns were contentions regarding the "traditional" composition of the family, but due to the fact that many New Zealand LGBT couples had already adopted children, the Committee found that recognition of those parental rights was clearly preferable over reserving the right (and the attendant societal benefit s) for only opposite-sex parents. *Id.* at 5-6; *see also* Louisa Wall, *The facts on my marriage bill* (opinion), N.Z. HERALD, Mar. 22, 2013 ("Gay couples adopt children now and have done so for at least the past 10 years. Unfortunately the law as [previously] worded only allows one person to be legally named as the child's parent.").

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[11] *Available at* http://www.parliament.nz/resource/en-nz/50DBSCH_SCR5764_1/a2eb2bf39827f8f70203f4679349247d3044def2.

The South African Constitutional Court likewise found tired the argument for legally restricting marriage relationships based on "procreative potential." *Fourie* at ¶¶ 85-86. Such a restriction, the court found, would demean couples incapable of procreating, couples not wishing to procreate, and parents who adopt children, by suggesting that their families are less worthy of respect. *Id.* ¶ 86.

Finally, in Argentina, one judge held that to not permit two persons of the same sex to enter into matrimony freely "legally diminishes and isolates them from the legal order"; he found that "to reject such a union is contrary to the right to create and protect a family, which is a fundamental element of society." *See* Carlos Fígari, ed., Per Scientam Ad Justitiam, Matrimonio para todas y todos: Ley de igualdad, at 30 (May 9, 2010) (internal quotation omitted).[12]

Thus, these countries effectively found that to deny equal marriage would *undermine*—not advance—the societal goals of the formation and protection of the family and the protection of children. The "tired argument" therefore results in the opposite result advanced by the opponents of marriage equality.

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[12] *Available at* www.fundaciontriangulo.org/documentacion/Librosenadores.pdf.

B. Animus Toward LGBT People Justifies Judicial Intervention

This Court has explained that laws that serve no practical purpose but to discriminate against a class of persons—animus—violate the Constitution's Equal Protection Clause. *See, e.g., United States v. Windsor*, 133 S. Ct. 2675, 2693-94 (2013). Indeed, "[t]he Constitution's guarantee of equality 'must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot' justify disparate treatment of that group." *Id.* (quoting *Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534-535 (1973)). When "[t]he avowed purpose and practical effect of the law here in question are to impose a disadvantage, a separate status, and so a stigma upon all who [wish to] enter into same-sex marriages," courts must intervene. *Id.* "The principal purpose [of refusing to recognize same-sex marriage] is to impose inequality, not for other reasons like governmental efficiency." *Id.* at 2694; *see also Romer v. Evans*, 517 U.S. 620, 634 (1996) ("[L]aws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected."). As demonstrated below, animus toward LGBT people has been a motivation for opposing marriage equality around the world.

The Sixth Circuit tried to distance the issue of same-sex marriage from the question of animus by asserting that when this Court has struck down a state law on the basis of animus, "it usually has been due to the novelty of the law and the targeting of a single group for disfavored treatment under it."

DeBoer, 772 F.3d at 408. The Sixth Circuit then concluded that there can be no animus behind the prohibition of same-sex marriage, as the true motivation for that legislation was "the fear that the courts would seize control over an issue that people of good faith care deeply about." *Id.* That type of motivation is still animus—passing legislation out of fear that a court will prohibit the state from discriminating against a group of people. And other countries around the world have rejected this animus in legalizing same-sex marriage.

In New Zealand, for example, the supporting Members of Parliament contended that opponents were reticent to include members of a group that it deemed less equal and with disregard. The Deputy Leader of the Labour Party submitted:

> Quite simply, we will not succeed as a country or a society if we continually find reasons to exclude people. The only place that takes us to is division and hatred. Why on earth would we want to stop a couple who love each other and who want to make a commitment to one and other [sic] from doing that? Why would we want to exclude some people from a cherished social institution?

See N.Z. Debates, 689 at 9487-88. Another Member similarly stated at the final debate: "The injustice of discriminating before the law against someone because of who they are—not because of what they

do, but of who they are intrinsically—is wrong, and we are past it in 2013." *Id.* at 9495.

The historical animus toward LGBT people has even been compared to other historic inequalities. A member of the New Zealand Parliament, for example, compared the second-class status of same-sex couples to racial segregation in the United States, noting the power of *Brown v. Board of Education*'s recognition that separate-but-equal is not equal. *See id.* at 9483.

And in Argentina, Judge Seijas, in her groundbreaking 2009 decision authorizing same-sex marriage in Buenos Aires, identified

> paradigmatic examples . . . drawn from comparative law, such as the laws of Nazi Germany prohibiting marriage between 'Jews and subjects of German or similar origin' (Racial Purity Act, 1935) or the restrictions that applied to Negroes, Asians or Indians in the United States from the colonial era until the ruling in *Loving v. Virginia* in 1967 (388 US 1).

Freyre at ¶ X. Similarly, Argentina's president observed law enforcement's contemporary fascist treatment of gays as undesirables and worried that some of the arguments made in opposition to the Marriage Equality measure were telling of an irrational societal character. *See* Casa Rosada, Office of the President of Argentina, Press Conference Given by the Nation's President, Cristina

Fernandez, with Argentine Journalists in Beijing (July 12, 2010).[13]

Finally, in South Africa, public proclamations expressly linked "the abolition of apartheid" with "the right of freedom of sexual orientation." *See* H. de Ru, A Historical Perspective on the Recognition of Same-Sex Unions in South Africa, 19 Fundamina 221, 227 & n.61 (2013). And the Constitutional Court found "that any justification for treating individuals, who are viewed as 'different' from the norm differently, would produce or perpetuate the subordination of that group and it is exactly this subordination of groups which the right to equality is aimed at eradicating." *See* Pierre de Vos, The 'Inevitability' of Same-Sex Marriage in South Africa's Post-Apartheid State, 23 S. AFR. J. ON HUM. RTS. 432, 448 (2007). The South African Constitutional Court aptly noted:

> Historically the concept of 'separate but equal' served as a threadbare cloak for covering distaste for or repudiation by those in power of the group subjected to segregation. The very notion that integration would lead to miscegenation, mongrelisation or contamination, was offensive in concept and wounding in practice. . . . Same-sex unions continue in fact to be treated with the same degree of repudiation that the state until two decades ago

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[13] *Available at* http://www.presidencia.gob.ar/discursos/3863.

> reserved for interracial unions; the statutory format might be different, but the effect is the same.

Fourie at ¶ 150, ¶ 81. As abroad, this repudiation, discrimination, and animus should not stand in the way of marriage equality for the millions of LGBT people in this country.

C. LGBT People Are a Suspect Class

The Sixth Circuit suggests that although LGBT people have experienced prejudice in this country, they have not experienced prejudice long enough to qualify as a suspect class for purposes of heightened review of a law under the Equal Protection Clause. *See DeBoer*, 772 F. 3d at 413. The Sixth Circuit reasons that the LGBT community was targeted "thousands of years" after the "traditional" definition of (opposite-sex) marriage emerged, so there must not be any correlation between the history of discrimination against the LGBT community and the effort to prevent LGBT people from marrying. *Id.* As Judge Daughtrey noted in her dissent, however, "[t]here is not now and never has been a universally accepted definition of marriage," so the majority's logic makes no sense. *Id.* at 431. In any event, while it is unclear the grounds on which the Sixth Circuit apparently concluded that animus toward LGBT individuals is a new phenomenon, other countries that have legalized marriage equality had a different view on the history of persecution of LGBT people and whether they are a suspect class.

Judge Seijas in Argentina, for example, recalled the response of the drafters at Buenos Aires' 1996 constitutional convention when asked why sexual orientation should be included in the city constitution's equality clause: "How could we not mention it in a world where there are too many who dream of bringing back the pink triangle and in a city where we still have police officers who act as if the pink triangle existed among us?" *Freyre* at ¶ VIII.[14] Judge Seijas also "highlight[ed] the hostility toward those in sexual minorities, with a structure similar to that of racism. . . . The irrational scorn . . . [t]he jokes, stereotypes, [and] use of expressions . . . are serious attacks on dignity to which many people are subjected in their daily life." *Id.* at XVI.

Canada and New Zealand likewise noted that LGBT persons have been historically disadvantaged. In Canada, for example, prior to the passage of the Civil Marriage Act and the *Halpern* decision (discussed below), in dissenting from a plurality opinion that dismissed an appeal by a couple seeking same-sex spousal benefits, one Supreme Court of Canada Justice explained that "[t]he historic disadvantage suffered by homosexual persons has been widely recognized and documented. Public harassment and verbal abuse of homosexual individuals is not uncommon. Homosexual women

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[14] The "pink triangle" was a symbol required to be worn by gay prisoners in Nazi concentration camps. *See, e.g., The Pink Triangle and the BA connection*, BUENOS AIRES HERALD, Oct. 19, 2014, *available at* http://www.buenosairesherald.com/article/172529/the-pink-triangle-and-the-ba-connection.

and men have been the victims of crimes of violence directed at them specifically because of their sexual orientation." *Egan v. Canada* (1995) 2 S.C.R. 513, 600 (Cory, J., dissenting). Courts in Canada would later recall this historic discrimination in finally recognizing same-sex marriage. *See, e.g.*, *Halpern v.* Canada *(Attorney General)* (2002) 60 O.R. (3d) 321 at para. 307 (Div. Ct.) ("There is absolutely no reason why the rights infringements that are in issue—and that have historically persisted for gays and lesbians—should continue any longer."); *see also* N.Z. Debates, 689 at 9497 (Apr. 17, 2013) (noting that the marital discrimination against the LGBT community was all the more harmful due to the "painful history of discrimination, of prejudice, and of homophobia.").[15]

Finally, the South African Constitutional Court found an "imperative constitutional need to acknowledge the long history in [that] country and abroad of marginalisation and persecution of gays and lesbians" and "a past based on intolerance and exclusion." *Fourie at* ¶ 59. The court framed it in this way:

> The sting of past and continuing discrimination against both gays and lesbians was the clear message that [the opposition] conveyed, namely, that they, whether viewed as individuals or in their same-sex relationships, did not

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[15] *Available at* http://www.parliament.nz/resource/en-nz/50HansD_20130417/b575516d55439cd15c4507e78eeaa932eb15d847.

> have the inherent dignity and were not worthy of the human respect possessed by and accorded to heterosexuals and their relationships. . . . [A] law that creates institutions which enable heterosexual couples to declare their public commitment to each other and achieve the status, entitlements and responsibilities that flow from marriage, but does not provide . . . for same-sex couples to achieve the same, discriminates unfairly against same-sex couples. It gives to the one and not to the other. . . . At the very least, then, the applicants . . . are entitled to a declaration to the effect that same-sex couples are denied equal protection of the law . . . and subjected to unfair discrimination under . . . the Constitution to the extent that the law makes no provision for them to achieve the dignity, status, benefits and responsibilities available to heterosexual couples through marriage.

Id. at ¶¶ 50, 79, 81. The court acknowledged that the bill of rights omitted a right to marry, but declared that constitutional guarantees of "dignity, equality and privacy" required "not the right to be left alone, but the right to be acknowledged as equals and to be embraced with dignity by the law." *Id.* at ¶¶ 48, 78.

D. Same-Sex Marriage Is a Fundamental Right

Even if this Court were to reject the arguments advanced under the Equal Protection Clause, surely it will recognize that nearly fifty years ago, in *Loving v. Virginia*, the Court unequivocally pronounced marriage a fundamental right. *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival.") (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). The Sixth Circuit—in denying this right to same-sex couples—proffered that marriage is a fundamental right only for opposite-sex couples, not for same-sex couples. In justifying this differential treatment, the Sixth Circuit itself reflected the animus directed at the LGBT community, resorting to the unfortunately common analogy of gay marriage to polygamy and incest:

> [H]ow would the constitutional, as opposed to policy, arguments in favor of same-sex marriage not apply to ***plural marriages***? . . . The same goes for the social acceptability of ***marriage between cousins***, a union deemed "desirable in many parts of the world . . . ."

See DeBoer, 772 F. 3d at 412 (emphasis added).

In responding to arguments founded on similar notions of historically negative attitudes toward women and minorities, a Member of the New

Zealand Parliament spoke about "traditional" notions of marriage, analogizing it to bans on interracial marriage in the United States and even invoking this Court's own landmark decision in *Loving*:

> We heard a lot about tradition. Those opposed [to marriage equality] said that the institution of marriage should not be changed, because of tradition. Those who support the bill showed that progress can occur only by changing historical practices. . . . This was graphically illustrated by so many of the arguments against this bill being precisely those that were used in the United States to try to justify continuing bans on interracial marriage: tradition, slippery slope, God's will—all the same arguments. The landmark Supreme Court case to finally end such bans in the United States was *Loving v. Virginia* . . . .

N.Z. Debates, 688 at 8534-5 (Mar. 13, 2013).[16] Ultimately, the majority of New Zealand's Government Administration Committee viewed the right to marry as a "human right" not to be denied to same-sex couples. *See* Marriage (Definition of Marriage) Member's Bill, As Reported by the

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[16] *Available at* http://www.parliament.nz/resource/en-nz/50HansD_20130313/b894a76a6875a06559cff4159306ab8883fa9ae6.

Government Administration Committee, at 2-3 (February 27, 2013).[17]

Likewise, the Supreme Court of Canada analogized the "tradition" of marriage with other laws that traditionally denied rights to women. In particular, the definition of "qualified persons" for civil office in Canada excluded women until the 1920s. But this "tradition" of excluding women could not be a basis for continuing to refuse women basic civil rights:

> The fact that no woman had served or has claimed to serve such an office is not of great weight when it is remembered that custom would have prevented the claim being made or the point being contested. Customs are apt to develop into traditions which are stronger than law and remain unchallenged long after the reason for them has disappeared. The appeal to history therefore in this particular matter is not conclusive.

Reference Re Same-Sex Marriage, 3 S.C.R. 698, 712 (2004) (citing *Edwards v. Canada* (1930) A.C. 124, 134). The court instead reasoned that definitions may change to address the "realities of modern life." *Id.* at 710.

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[17] *Available at* http://www.parliament.nz/resource/en-nz/50DBSCH_SCR5764_1/a2eb2bf39827f8f70203f4679349247d3044def2.

Moreover, in deciding that the common law definition of marriage was discriminatory, the Ontario Court of Appeal discussed the "liberty interest of individuals to make fundamental choices regarding their lives." *Halpern v. Canada* (Attorney General) (2003) 65 O.R. 161 at para. 87 (C.A.). The court affirmed the definition of the right of "liberty" as "absence of coercion and the ability to make fundamental choices with regard to one's life." *Id.* (citing *Nova Scotia (Attorney General) v. Walsh* (2002) S.C.C. 83 at para. 63). The court concluded that "the common law requirement that persons who marry be of the opposite sex denies persons in same-sex relationships a fundamental choice—whether or not to marry their partner." *Id.*

Finally, the Buenos Aires Court of First Instance rebuffed reliance on "tradition" to oppose equal marriage: "[T]he forms that . . . [the family] has taken are highly varied . . . . [A]lthough the family is universal, like all other institution [sic], it is a product of society, subject to changes and modifications." *Freyre* at ¶ XI (internal quotation omitted). Regarding the petitioners before her, Judge Seijas concluded, "the definition of marriage will have to be amended to adopt a concept that recognizes a couple that has formed as a member of our society." *Id.*

E. Same-Sex Marriage Does Not Undermine Religious Freedom

Opponents of same-sex marriage have also expressed faith-based concerns about "promoting homosexuality," essentially on the grounds that it is

a sin. For example, district Judge Heyburn in his order in the Kentucky cases alluded to this point of view:

> Many Kentuckians believe in "traditional marriage." Many believe what their ministers and scriptures tell them: that a marriage is a sacrament instituted between God and a man and a woman for society's benefit. They may be confused—even angry—when a decision such as this one seems to call into question that view.

Bourke v. Beshear, 996 F. Supp. 2d 542, 554 (W.D. Ky. Feb. 12, 2014). Judge Heyburn then called out this argument for its fundamental flaw: "Assigning a religious or traditional rationale for a law, does not make it constitutional when that law discriminates against a class of people without other reasons." *Id.*

In fact, religion has long been an obstacle for LGBT rights, not only in the United States, but in the many other countries where the decriminalization of "homosexuality" and same-sex marriage have been debated. *See, e.g., Lawrence v. Texas*, 539 U.S. 558, 571 (2003) ("[F]or centuries there have been powerful voices to condemn homosexual conduct as immoral. The condemnation has been shaped by religious beliefs, conceptions of right and acceptable behavior, and respect for the traditional family."). Such beliefs and conceptions, however, do not make a constitutional argument.

Other countries have applied this reasoning to the issue of marriage equality. In Canada, for example, opponents of same-sex marriage asserted that allowing same-sex couples to marry would discriminate against religious groups and individuals who do not agree with that change. *See, e.g.*, Hurley at 12. The Supreme Court of Canada rejected this argument out-of-hand: "[T]he mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the rights of another." *Reference Re Same-Sex Marriage*, 3 S.C.R. at 719. Instead, the Canadian high court explained that the proposed marriage equality bill "enriches our society as a whole and the furtherance of these rights cannot undermine the very principles the *Charter* [*of Rights and Freedoms*] was meant to foster." *Id.* at 718-19.

In New Zealand, the committee charged with reviewing submissions during the legislative debates recognized the varied concerns presented by religious groups. On the one hand, many groups maintained that marriage is a "covenant" between a man, a woman, and God for the purpose of procreation. *See* Marriage (Definition of Marriage) Member's Bill, As Reported by the Government Administration Committee, at 3 (February 27, 2013).[18] Others expressed concerns regarding the right of recognized religious celebrants to refuse solemnization to same-sex couples. *Id.* Still others felt that because they were not allowed to marry,

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[18] *Available at* http://www.parliament.nz/resource/en-nz/50DBSCH_SCR5764_1/a2eb2bf39827f8f70203f4679349247d3044def2.

they were in fact prohibited from practicing their religion. *Id.* The committee concluded that the bill only affected legal, not religious, marriage and, therefore, did not directly implicate religious concerns. *Id.* At the final Parliamentary debates, the bill's sponsor noted that "those who celebrate religious or cultural marriage are absolutely unaffected by this bill. That has never been part of the State's marriage law and it never should be." *See* N.Z. Debates, 689 at 9483 (Apr. 17, 2013).[19] Another Member stated at the final debates that "it is the role of the State to protect freedom of religious expression—and this bill reaffirms that—it is not the role of the State to uphold one group's religious beliefs over another's." *Id.* at 9505.

In responding to religious arguments in South Africa, the Constitutional Court there found that "[i]t would be out of order to employ the religious sentiments of some as a guide to the constitutional rights of others." *Fourie* at ¶ 92. The court moreover explained that to recognize equal marriage was to "affirm the right of people to self-expression without being forced to subordinate themselves to the cultural and religious norms of others." *Id.* at ¶ 61.

And in the Netherlands, during the parliamentary debates, it was noted that "for some marriage is first and foremost a God-given institution. . . . [But] the Government considers marriage first and foremost in its civil law context,

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[19] *Available at* http://www.parliament.nz/resource/en-nz/50HansD_20130417/b575516d55439cd15c4507e78eeaa932eb15d847.

hence as a legal concept, as an institution with numerous legal consequences." *See* 26672 Wet openstelling huwelijk, Handelingen Tweede kamer, Plenaire behandeling (Sept. 6 2000), Eerste termijn van de regering [Law on Opening Marriage, Minutes of the House of Representatives, Plenary Session of September 6th, 2000, First Round of Debate by the Government] at 98-6381.[20]

Finally, Argentina was not immune to the religious divide. In a press interview just prior to the passage of the Law of Marriage Equality, Argentina's President Kirchner expressed her disappointment at the "aggressive" tone and "holy war" rhetoric opposing the amendment to Argentine Civil Matrimony deployed by those whom she thought should be promoting tolerance and acceptance. *See* Casa Rosada, Office of the President of Argentina, Press Conference Given by the Nation's President, Cristina Fernandez, with Argentine Journalists in Beijing (July 12, 2010).[21]

The global religious divide may always be an issue on the road to LGBT equality, but as this Court articulated in *Lawrence*, "[t]he issue is whether the majority may use the power of the State to enforce these views on the whole society through operation of the [] law." *Lawrence*, 539 U.S. at 571.

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[20] *Available* at http://www.emancipatie.nl/home/nieuw_op_de_site/ (search for: "openstelling huwelijk"; click: "zoek"; click on the second result; scroll to "tweede kamer"; click on the second link).

[21] *Available at* http://www.presidencia.gob.ar/discursos/3863.

The answer in the United States, as in countries around the world, should be no.

II. COUNTRIES THAT HAVE LEGALIZED SAME-SEX MARRIAGE HAVE NOT EXPERIENCED ANY OBSERVABLE ADVERSE IMPACT ON SOCIETY

In declining to extend marriage rights to same-sex couples, the Sixth Circuit suggested that "the only thing anyone knows for sure about the long-term impact of redefining marriage is that they do not know." *DeBoer*, 772 F.3d at 406. The Michigan respondents echoed this sentiment, suggesting the rationality of "'wait[ing] and see[ing] before changing a norm that our society (like all others) has accepted for centuries.'" Mich. Resp. Br. at 9 (quoting the Sixth Circuit in *DeBoer*). This "wait-and-see" approach has at its core an apocalyptic fear of the collapse of civil society if LGBT persons are given the equal right to marry, but no one can dispute the anticlimactic result of marriage equality where recognized around the world.

A. The Netherlands

Prior to the legalization of same-sex marriage in the Netherlands nearly fourteen years ago, "a vocal minority insisted that gay marriage would mean the end of Western civilization." *See* Boris O. Dittrich, *Op-Ed: Gay marriage's diamond anniversary: After the Netherlands acted, civilization*

as we know it didn't end, L.A. TIMES, Apr. 17, 2011.[22] One member of the Dutch Parliament at the time (and the initial sponsor of the marriage equality bill), Boris Dittrich, since observed that not only did those apocalyptic fears not ring true, but even the opposition ultimately admitted to being wrong. *Id.* And when the Netherlands' new government took control in 2006, they did not seek to repeal the marriage equality law given its acceptance by the Dutch people.

Indeed, there have been no reports of the deterioration of the social order in the Netherlands, nor have the positive effects of marriage as an institution been undermined. For example, the divorce rate in the Netherlands is down from 2.3 in 2001 to 2.1 in 2012, while the European Union as a whole saw divorce rates increase from 1.8 in 2001 to 2.0 in 2010, the last year this data was reported. Eurostat, *Divorces per 1,000 persons*.[23] And in 2007, the overwhelming majority of children in the Netherlands, 75.5%, still lived in a household with two married parents. Maria Lacovou and Alexandra Skew, *Household Structure in the EU*, 20 (2010).[24]

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[22] *Available at* http://articles.latimes.com/2011/apr/17/opinion/la-oe-dittrich-gay-marriage-20110417.

[23] *Available at* http://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=tps00013 (last visited March 3, 2015).

[24] *Available at* http://ec.europa.eu/eurostat/documents/3888793/5848337/KS-

Empirical evidence from the Netherlands also undermines any claim that there is a distinct benefit to a child being raised by a man and a woman. A 2009 study, for example, showed no correlation between children's psychological adjustment and whether they had heterosexual or LGBT parents. *See* Henry Bos and Theo G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families,* 62 SEX ROLES 114, 120 (2009). The study also found that the sexual orientation of parents had no effect on the global self-worth of their child. *Id.* at 123. And children who were raised by two lesbian mothers were less likely to believe that their own gender was superior. *Id.* Thus, same-sex marriage just does not seem to be having an adverse impact on Dutch society.

B. Canada

Much like in the Netherlands, legalizing same-sex marriage in Canada did not result in any reports of public turmoil. In fact, support for gay rights has risen. In 2007, for example, seventy percent of Canadians felt that "homosexuality" should be accepted, while in 2013, this number rose to eighty percent. *See* Kohut, Andrew, The Global Divide on Homosexuality, Pew Research Center (June 4, 2013). In a 2013 Ipsos poll, seventy-six percent of participants said that "same-sex couples are just as likely as other parents to successfully raise children." *See* Same Sex Marriage, Iposos (June

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RA-10-024-EN.PDF/5daa0a6a-f773-4dcd-82de-ab09ed10c907?version=1.0.

2013).[25] Numerous news articles have expressed this general sentiment in response to the fears promulgated by equal rights opponents: Nothing bad happened. *See* Lakritz, Naomi, *Six Years of Gay Marriage and Canada Hasn't Crumbled*, CALGARY HERALD, July 11, 2011.[26]

Moreover, according to multiple sources, divorce rates in Canada have stayed relatively constant. *See* Canadian Divorce Statistics, Institute of Marriage and Family Canada[27]; Family Life – Divorce, Employment and Social Development of Canada.[28] The number of marriages per 1,000 people and the average age at first marriage also remained relatively consistent from 2004 to 2008. *See* Family Life – Overview, Employment and Social Development.[29]

C. Argentina

Twenty years before same-sex marriage became legal in Argentina, the Argentina Supreme

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[25] *Available at* http://www.ipsos-na.com/download/pr.aspx?id=12795.

[26] *Available at* http://www.calgaryherald.com/life/years+marriage+Canada+hasn+crumbled/5091972/story.html.

[27] *Available at* http://www.imfcanada.org/sites/default/files/Divorce_2013.pdf (last visited March 3, 2015).

[28] *Available at* http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=76#M_1 (last visited March 3, 2015).

[29] *Available at* http://www4.hrsdc.gc.ca/d.4m.1.3n@-eng.jsp?did=8 (last visited March 3, 2015).

Court of Justice balked at permitting legal status for the gay community out of fear that such "abuse of freedom [would] lead[] to [societal] dissolution." *Freyre* at § XIII (quoting Rulings: 314"1531). The Argentina Supreme Court noted:

> A tolerated minority always needs a tolerant majority. But this may reach a situation in which so many minorities are demanding tolerance that no majority is possible any longer. . . . The permissiveness that was rejected by the previous authority reasonably may have been considered an essential breach of those common values, such that while the abuse of power leads to tyranny, the abuse of freedom leads to dissolution.

Id.

Contrary to such apocalyptic forebodings, today, in spite of marriage equality in Argentina, no signs of social collapse have appeared, and "we appear no closer to the brink of social breakdown." *Id.* Moreover, a 2013 Pew Research Study found that, in Argentina, views about "homosexuality" remained largely the same between 2007 and 2013, with 72% and 74% of Argentines accepting "homosexuality," respectively. *See* Kohut at 2. These views are held not only by younger generations, but by people over 50 as well, with 62% acceptance in that age group. *Id.* at 6.

D. New Zealand

The New Zealand Parliament was aware of the opposition argument that marriage equality might result in some horrific turn of events for families and the general populace, which the Deputy Leader of Parliament for the Labour Party addressed head-on:

> As we have seen with previous advances in the recognition of the rights of New Zealanders, there have been shrieks and howls about how society would end when women got the vote and when homosexuality was decriminalised, and, in the end, as Maurice Williamson has eloquently told us, the sky has not fallen in.

N.Z. Debates, 689 at 9488. Indeed, as the *New Zealand Herald* observed in an opinion piece commemorating the one-year anniversary of gay marriage there, "[m]arriage break-ups have been on the decline in New Zealand since 1998, and it's assumed the 2013-2014 year will yield the same trend. That means gay marriages aren't affecting straight marriages, as some predicted." Lee Suckling, *Reflecting on a year of marriage equality*, THE NEW ZEALAND HERALD, Apr. 6, 2014.[30] The *Herald* mused, "[a]s for that 'day of reckoning' [the opposition] spoke of? We're all still waiting." *Id.*

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[30] *Available at* http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=11239088.

E. South Africa

Finally, South Africa remains a relatively difficult place to be openly gay in the wake of marriage equality, but at least prominent religious leaders such as Archbishop Emeritus Desmond Tutu and Anglican Archbishop of Cape Town, Dr. Thabo Makgoba, have been vocal supporters of gay rights in South Africa. *See, e.g.*, Thabo Makgoba, *Speak out on homosexual oppression*, THE SUNDAY INDEPENDENT, March 16, 2014.[31] Dr. Makgobam, for example, has acknowledged the right to same-sex marriage in South Africa, condemned the Ugandan criminal penalty for attempting to enter into a same-sex marriage, and criticized the South African government for not doing enough to "highlight the plight of those who are suffering at the hands of governments." *Id.* Likewise, Desmond Tutu has called homophobia "every bit as unjust" as apartheid, stating: "A parent who teaches a child that there is only one sexual orientation and that anything else is evil denies our humanity and their own too." Desmond Tutu: 'Homophobia Equals Apartheid,' AFROL NEWS, July 7, 2004.[32]

* * *

Eighteen countries around the world now recognize full marriage equality. These countries—friends and allies of the United States—did so not only through legislative action but, when necessary,

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[31] *Available at* http://www.iol.co.za/sundayindependent/speak-out-on-homosexual-oppression-1.1661944.

[32] *Available at* http://www.afrol.com/articles/13584.

through judicial intervention. They uniformly rejected the inhumane notion of a separate-but-equal society. They drew parallels to, among other things, apartheid in South Africa, the struggle of African Americans in the United States, and the fight for equality for women. They even invoked this Court's decision in *Loving v. Virginia*, and abhorred treating LGBT people like interracial couples before 1967. They recognized no legitimate purpose of a law that targeted couples of the same sex and stripped them of their dignity. And as many as fourteen years later, "the sky has not fallen."

CONCLUSION

For all of the forgoing reasons, and for those presented by petitioners, the Sixth Circuit's decision should be reversed.

Respectfully submitted,

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Counsel for Amici Curiae

Dated: March 6, 2015

APPENDIX

APPENDIX

Complete List of Amici Curiae:

Human Rights Watch
The New York City Bar Association
Canadian Civil Liberties Association ("CCLA")
The National Council for Civil Liberties ("Liberty"), UK
Legal Resources Centre ("LRC"), South Africa
Center for Legal and Social Studies ("CELS"), Argentina
La Federación Argentina de Lesbianas, Gays, Bisexuales y Trans ("FALGBT")

FALGBT's fifty-seven member organizations include:

La Fulana, Club de Osos, ATTTA, Nexo AC, Judíos Argentinos Gays, Puerta abierta, PS Diversidad, RITTA, Libre Diversidad, Mesa Nacional por la Igualdad, Diversidad–Partido Social, Cooperativa Estilo Diversa, CAEL, UCR Diversidad, Colectivo Diverso Alta Gracia, Mesa Diversidad Sexual, Colectivo Frida Khalo (Libre Diversidad), Grupo LGBT, GLUC, Diversidad PS, Formosa Diversa, NOA Diversa, Eras Jujuy, Igualdad y diversidad pampeana, Asociación Civil - Diversa Homosexual, ADISTAR, ALUDIS, GTS, Collage, La Glorieta, Aequalis, UDISPA, Somos, Igualdad.Argentina, Diversidad PS Ciudad d Santa Fe, Kinship, Divas, LGBT Tierra del Fuego, Tucumán Diverso, Pehuajo LGBT, PS Diversidad, CEGLA, Cuadernos de existencia lesbian, Centro Cristiano de la comunidad GLTBB,

Comuniad cristiana nueva esperanza, AMADI, Hombres Diversos Mar del Plata, ACIDS, AXIS, Diversidad Socialista, Diversidad Universitaria, Asociación travestis y trabajadoras sexuales, Agrupación Livertá, Generando Generxs, ALUDIS, GTS, and Mesa Nacional por la Igualdad Neuquén.